

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Brian Boyd, Lee County, Iowa d/b/a Southeast Iowa Redemption Center Lee County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2007-AQ- 17
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TO: Brian Boyd
d/b/a Southeast Iowa Redemption Center
618 Main
Keokuk, Iowa 52632

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Boyd, d/b/a Southeast Iowa Redemption Center, for the purpose of resolving air quality and solid waste violations which have occurred at property owned by Brian Boyd located at 258th Avenue in Keokuk, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Brent Early, Environmental Specialist
DNR Field Office 6
1023 W. Madison
Washington, Iowa 50319
Phone: 319/653-2135

Relating to legal requirements:
Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Brian Boyd operates a business known as Southeast Iowa Redemption Center on property owned by Brian Boyd and is located in Lee County, Iowa. The local address of the property is 258th Street, Keokuk, Iowa.
2. On March 21, 2007, DNR Field Office #6 received a complaint of open burning at the Southeast Iowa Redemption Center site (the site) located at 258th Street in Keokuk. On March 29, 2007, a DNR field officer conducted a complaint investigation and observed evidence of illegal open burning and the illegal open dumping of trade wastes in an area behind a building. Photographs were taken at the site. On April 9, 2007, DNR sent a Notice of Violation letter (NOV) to Brian Boyd, informing him of the violations of the prohibitions against illegal open burning and illegal open dumping and requiring cleanup of the site by May 7, 2007.
3. On May 11, 2007, the DNR field office revisited the site and observed that cleanup had occurred, as required. Receipts for proper disposal of the trade waste were provided to DNR during the May 11, 2007, visit to the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.
2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade wastes is specifically prohibited. The above facts demonstrate violations of this provision.

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3. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Brian Boyd, d/b/a Southeast Iowa Redemption Center, agrees to do the following:

1. Pay a penalty of \$500.00 (five hundred dollars) within 30 days of the date this order is signed by the director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$500.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Brian Boyd, d/b/a Southeast Iowa Redemption Center, has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly

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removing, transporting and disposing of the solid wastes from the site. Based on these considerations, \$200.00 is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$100.00 is assessed for this factor.

Culpability – Brian Boyd, d/b/a Southeast Iowa Redemption Center, has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$200.00 is assessed for this factor.

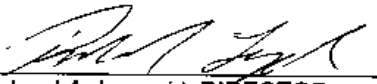
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Brian Boyd, d/b/a Southeast Iowa Redemption Center. For that reason, Brian Boyd, d/b/a Southeast Iowa Redemption Center, waives his right to appeal this order or any part thereof.

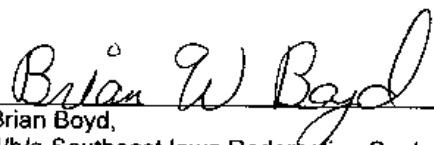
VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307(2). Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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Richard A. Leopold, DIRECTOR
Iowa Department of Natural Resources

Dated this 24 day of
August, 2007.


Brian Boyd,
d/b/a Southeast Iowa Redemption Center

Dated this 16 day of
AUGUST, 2007.

Lee County Air Quality File; Anne Preziosi; Field Office 6; VII.C1.